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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Amcor Rigid Plastics USA, Inc.
c/o Nancy Flores (agent)
818 W. Seventh St.
Los Angeles, CA 90017

Amcor Rigid Plastics USA, Inc.
Attn.: owner or managing agent
2425 S. Watney Way
Fairfield, CA 94533

NOTICE OF INTENT TO FILE CITIZEN SUIT
UNDER THE FEDERAL WATER POLLUTION CONTROL ACT

Facility: Amcor Rigid Plastics USA, Inc.
2425 S. Watney Way
Fairfield, CA 94533
Solano County
WDID No. 2 48I020051

Basin Plan: San Francisco Bay Basin, Region 2, Water Quality Control Plan

Receiving Water: Suisun Slough and Suisun Bay in the San Francisco Bay Watershed

To whom it may concern:

On behalf of the Plastic Pollution Coalition, a project of the Earth Island Institute (collectively, "PPC"), whose address is 2150 Allston Way #460, Berkeley, California 94704, and telephone number is (510) 859-9100, I write regarding violations under the federal Clean Water Act ("CWA") occurring at the facility of Amcor Rigid Plastics USA, Inc. ("Amcor") located at 2425 S. Watney Way, Fairfield, CA 94533 ("Facility"). **The purpose of this letter is to provide Amcor with notice of these violations and notice of PPC's intent to file a lawsuit against the Amcor in sixty (60) days under the CWA in Federal District Court, pursuant to 33 U.S.C. § 1365(a)(1).** This letter puts Amcor on notice of violations and is being sent to you as the responsible owner, officer, and/or operators of Amcor, or as the registered agent for Amcor.

I. Legal Framework

The objective of the Clean Water Act is to restore and maintain the "chemical, physical and biological integrity of [the] Nation's waters." 33 U.S.C. § 1251(a). In accordance with that objective, § 301(a) of the Clean Water Act makes unlawful "the discharge of any pollutant by any person," unless in compliance with a permit issued under the National Pollutant Discharge Elimination System ("NPDES"). 33 U.S.C. §§ 1311(a), 1342; *Envtl. Prot. Agency v. California ex rel. State Water Resources Control Board*, 426 U.S. 200, 205 (1976). "An NPDES permit serves to transform generally applicable effluent limits and other standards . . . into the obligations . . of the individual discharger." *State Water Resources Control Board*, 426 U.S. at 205. Noncompliance with a permit constitutes a violation of the Clean Water Act. 40 C.F.R. § 122.41. The plain language of the Clean Water Act authorizes citizens to enforce all permit conditions. *Northwest Envtl. Advocates v. City of Portland*, 56 F.3d 979, 986 (9th Cir. 1995).

A. Stormwater Permit

Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p), establishes a framework for regulating pollutants associated with industrial activity. In California, any person who discharges storm water associated with industrial activity must comply with the terms of California's general permit covering such discharges ("Stormwater Permit").[1] 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.41(a); Stormwater Permit,§ C(1). "Any [Stormwater] Permit noncompliance constitutes a violation of the [CWA] and the [California] Porter-Cologne Water Quality Control Act." Stormwater Permit, § C(1). Broadly, the Stormwater Permit prohibits discharges of materials other than storm water directly or indirectly to waters of the United States and storm water discharges which "cause or threaten to cause pollution, contamination, or nuisance." *Id.*, § A. The Stormwater Permit imposes a duty to "take all responsible steps to minimize or prevent any discharge in violation of [the Stormwater] Permit which has a reasonable likelihood of adversely affecting human health or the environment." *Id.*, § C(4). It also imposes monitoring, observation, and reporting obligations on the permittee. *Id.*, § B.

The Stormwater Permit implements the requirements of the Clean Water Act through both technology-based provisions and water quality-based standards. The Stormwater Permit sets out four basic requirements for permittees: (1) effluent limitations, (2) receiving water limitations, (3) the implementation of a Storm Water Pollution Prevent Plan ("SWPPP"), and (4) the development of a Monitoring and Reporting Program ("MRP").

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[1] National Pollutant Discharge Elimination System General Permit No. CAS000001, California Water Quality Control Board, Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities. The Stormwater Permit is available at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/induspmt.pdf. Amcor submitted a Notice of Intent for coverage for the Facility under the Stormwater Permit to the State Water Resources Control Board on June 18, 2009.

B. Effluent Limitations

First, the Stormwater Permit sets effluent limitations. There are three basic effluent limitations. Where the EPA has set effluent limitation guidelines for an industry, storm water discharges may not exceed the specific guidelines. Stormwater Permit, Effluent Limitation B(1). Additionally, storm water discharges shall not contain a hazardous substance equal to or in excess of a reportable quantity listed in 40 C.F.R. Part 117 and/or 40 C.F.R. Part 302. Stormwater Permit, Effluent Limitation B(2). Finally, the Stormwater Permit includes a technology-based requirement. It requires that facility operators "reduce or prevent pollutants associated with industrial activity" through (1) the implementation of the best available technology economically achievable ("BAT") for toxic and non-conventional pollutants and (2) the best conventional pollutant control technology ("BCT") for conventional pollutants.[2] Stormwater Permit, Effluent Limitation B(3). A facility operator can comply with this requirement by developing and implementing a Storm Water Pollution Prevention Plan ("SWPPP") that (1) complies with the requirements in Section A of the Stormwater Permit and (2) includes best management practices ("BMPs") that achieve BAT/BCT.[3] *Id.*

The Environmental Protection Agency ("EPA") has established benchmarks for pollutant discharges, which serve as the parameters to determine if a facility is properly implementing safeguards and procedures to prevent unlawful discharges. 65 Fed. Reg. 64746, Table 3. These benchmarks are relevant and an objective standard to evaluate whether a facility has implemented the requisite BAT and BCT. *See* Table 1.

Table 1: **Relevant EPA Benchmarks**

Pollutant	EPA Benchmark
Total Suspended Solids ("TSS")	100 mg/L

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[2] Conventional pollutants are those typical of municipal sewage, and for which municipal secondary treatment plants are typically designed as biological oxygen demand (BOD), total suspended solids (TSS), fecal coliform bacteria, oil and grease, and pH. 40 C.F.R. § 401.16. Nonconventional pollutants are all pollutants that are not included in the list of conventional or toxic pollutants in 40 C.F.R. Part 401. Includes pollutants such as chemical oxygen demand (COD), total organic carbon (TOC), nitrogen, and phosphorus.

[3] BMPs are

> schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

40 C.F.R. § 122.2. BMPs can be structural or non-structural.

The California Legislature, through passage of the Nurdles Law (California Water Code section 13367) specifically targets plastic pollution, establishing minimum BMPs for facilities that manufacture, handle, and transport preproduction plastic. The Nurdles Law prescribes specific BMPs which should be implemented at each industrial site handling plastic pellets. The minimum BMPs include: containment systems at all onsite storm drain discharge locations; measuring to prevent discharge of plastic pellets during loading and unloading; storage of pellets in sealed containers; installation of capture devices under transfer valves and devices during loading and unloading; and vacuum or vacuum type system for quick cleanup of fugitive plastic pellets. Cal Water Code § 13367(e)(1) – (5).

C. Receiving Water Limitations

Second, the Stormwater Permit prohibits the discharge of water that causes or contributes to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan, here the San Francisco Bay Water Quality Control Plan ("Basin Plan"). Stormwater Permit, Receiving Water Limitation C(2); *Baykeeper v. Kramer Metals, Inc.*, 619 F. Supp. 2d 914, 920 (C.D. Cal. 2009). The Basin Plan contains "discharge prohibitions applicable throughout the region." Basin Plan, 4-7 and Table 4-1; *see* Table 2, below.

Table 2: **Basin Plan Discharge Prohibitions**

No.	It shall be prohibited to discharge:
6	All conservative toxic and deleterious substances, above those levels which can be achieved by a program acceptable to the Regional Board, to waters of the Basin
7	Rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plain areas.

D. Stormwater Pollution Prevention Plan

Third, the Stormwater Permit requires that permittees develop and implement a SWPPP that meets certain requirements. Stormwater Permit, Section A (Storm Water Pollution Prevention Plan Requirements). The SWPPP has two major objectives: (1) to identify and evaluate sources of pollutants and (2) to identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. Stormwater Permit, Section A(2). Section A of the Stormwater Permit catalogues with significant detail what an SWPPP must contain to comply with the General Permit. A SWPPP must contain a compliance activity schedule, a description of industrial activities and pollutant sources, a description of BMPs, drawings, maps (including a site map), and relevant copies or references of parts of other plans. *Id.* A permittee must evaluate and update the SWPPP with additional BMPs necessary to achieve compliance with the General Permit. *See* Stormwater. Permit, Receiving Water Limitation C(3)-(4), Section A.2 and A.9.

E. Monitoring and Reporting Program

Fourth, the Stormwater Permit requires a permittee to develop a Monitoring and Reporting Program ("MRP"). Stormwater Permit, Section B. The purpose of the MRP is to ensure compliance with the terms of the Stormwater Permit, monitor changing conditions, aid in implementation and revision of the SWPPP, and to measure the effectiveness of BMPs in use at a facility. Stormwater Permit, Section B.2. Specifically, as part of the MRP, a permittee must:

- Quarterly visually observe on a day with no stormwater discharge all drainage areas for the presence of unauthorized non-stormwater discharges (*Id.* at Section B.3)
- Conduct monthly visual observations during daylight hours of storm water throughout the wet season (*Id.* at Section B.4)
- Collect and test water samples from each stormwater outfall from the first and one other storm event during facility operating hours (*Id.* at Section B.5)

Monitoring, including observation and collection of visual samples, is required "from all drainage areas that represent the quality and quantity of the facility's storm water discharges from the storm event." Id. at Section B.7.a.

> If visual observation and sample collection locations are difficult to observe or sample (e.g., sheet flow, submerged outfalls), facility operators shall identify and collect samples from other locations that represent the quality and quantity of the facility's storm water discharges from the storm event. (Id. at Section B.7.c.)

The monitoring and reporting program should inform changes in management, which should be reflected in revisions of the SWPPP, as necessary. *Id.* at Section B.

F. Penalties for Violations of the Clean Water Act and Relief PPC Seeks

Pursuant to section 309(d) of the Clean Water Act, 33 U.S.C. 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the CWA subjects the violator to a penalty for all violations within a five-year time frame. These provisions of law authorize civil penalties for each separate violation of the CWA of $37,500. *See* 33 U.S.C. § 1319(d); *see also* 40 C.F.R. § 19.4. In addition to civil penalties, the CWA authorizes the imposition of injunctive relief to prevent Amcor from further violations of the CWA pursuant to Sections 505(a) and (d), 33 U.S.C. §§ 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

II. Background: Amcor

Based on PPC's investigation, Amcor has been operating the Facility since as early as 1997. Applicable standard industrial codes ("SIC") for operations at the site include those listed in Table 3.

Table 3: **Applicable Standard Industrial Codes Identified by Amcor**

3085	Plastic Bottles

Amcor manufactures plastic polyethylene terephthalate (PET) bottles for the food and beverage industries. "The Facility operates 24-hours per day, seven days per week, 52 weeks of the year." SWPPP (10/1/12). Compounds utilized in the manufacturing process include inks, solvents, hydraulic oils, heat transfer oils, and raw plastic materials. Outdoor operations include loading docks, transformers, compressed gas storage, water treatment, and storage of PET in eight silos of 220,000-pounds capacity each.

Stormwater from the Facility drains into the public stormwater system located on the Facility's periphery and is discharged to Suisun Slough, Suisun Bay, and then to the San Francisco Bay. There are significant wetlands in the area of the Facility.

III. Violations

PPC's investigation concluded that Amcor is in violation of the Clean Water Act and the Stormwater Permit because it has caused or permitted waste to be discharged, or deposited where it can be and has been discharged, or threaten to discharge waste into waters of the state and the United States, and has created and threatened to create a condition of pollution in violation of the terms of its Stormwater Permit. Furthermore, PPC has failed to comply with the monitoring and reporting terms of the Stormwater Permit and to revise its SWPPP and pollution control measures to rectify violations of the Stormwater Permit. This Notice targets enforcement for violations occurring in the five-year period immediately proceeding the date of this letter through the date of resolution of this matter.

A. Discharge of Total Suspended Solids

33 U.S.C. 1311(a)	**Discharge of pollutant not in compliance with law**
Stormwater Permit Discharge Prohibition A.1	**Discharge of materials other than stormwater**

Amcor is violating the CWA in that it has discharged and is likely to discharge the total suspended solids (TSS) into waters of the state and United States without complying with the Stormwater Permit. Amcor has self-reported discharges of TSS inconsistent with EPA's Benchmarks (*see* Table 4) in violation of the terms of the Stormwater Permit and the CWA. TSS may indicate significant plastic pollution, as large quantities of plastic are stored in silos at the site. Furthermore, Amcor reported that it did not on the date of this violation measure stormwater

within the first hour of the storm event, so earlier concentrations of TSS were likely higher than those reported.

Amcor is violating Prohibition A.1 of the Stormwater Permit in that it has discharged and is likely to discharge high levels of TSS where it will be transported to surface waters, as discussed above. In particular, the discharges of large amounts of TSS suggests illegal discharges of refuse to waters of the state.

Table 4: **Discharge of Pollutants in Violation of EPA Benchmarks**

Pollutant	Date & Location	Measurement[4]	EPA Benchmark
TSS	10/22/12, DP-1	375 mg/L	100 mg/L

B. Failure to Adequately Report and Respond to Permit Violation

Stormwater Permit Monitoring and Reporting Requirement, Section C.11.d	**Failure to fully report and describe mitigation of high levels of total suspended solids**
Stormwater Permit Effluent Limitation B.3; SWPPP Requirements	**Failure to implement BAT/BCT and to implement a SWPPP that complies with the requirements of the Stormwater Permit; Failure to respond to eliminate unauthorized non-storm water discharges**
Stormwater Permit Standard Provisions Section C.4	**Failure to take reasonable steps to minimize or prevent discharges in violation of the Stormwater Permit**

Amcor's 2012-2013 Annual Report includes discharges of TSS that exceed EPA benchmark thresholds. Amcor has not described the cause of this noncompliance nor described steps that were or shall be taken to reduce and prevent recurrence of the noncompliance. Amcor is violating Effluent limitation B.3 and Standard Provisions C.4 and C.11.d of its Stormwater Permit because, it has made insufficient or no effort to correct past violations and to avoid further discharge of pollutants.

C. Failure to Perform Monitoring and Analysis

Stormwater Permit Monitoring and Reporting Requirement, Section B.4	**Failure to perform stormwater visual observations**

Amcor has shown a steady pattern in the last three years of failing to perform stormwater observations during wet months or misreporting its monitoring activity. Table 5 lists the inches of rainfall for each month of the wet season, with the box for each month in which Amcor

[4] Units are the same as in Table 1.

reported it was unable to make observations due to no discharge shaded. Many of these months were months of ample rainfall. Table 5 also demonstrates that in its 2010-2011 Annual Report Amcor reported making a visual inspection of stormwater in January, when there was no rain.

Table 5: **Rainfall at the Facility (months in which Amcor claimed insufficient discharge to perform observation are shaded)**

	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014
October	5.71	2.38	1.65	1.48	0.00
November	0.69	2.50	1.25	4.75	1.28
December	2.13	7.13	0.23	7.73	0.74
January	8.29	0.00	0.55	0.60	0.26
February	4.14	4.26	1.04	0.11	9.58
March	1.66	5.05	6.77	1.07	2.66
April	3.43	0.39	2.31[5]	1.41	2.39
May	0.98	0.96	0.04	0.37	0.00

Stormwater Permit Monitoring and Reporting Requirement, Section B.5	**Failure to perform stormwater sampling and analysis**

Amcor failed to sample any storm events in the wet seasons of 2009-2010, 2011-2012, and 2013-2014 despite months with significant rainfall in each of those years. See Table 5.

Amcor sampled only one storm in 2010-2011's wet season, although it reported making visual observations of stormwater each month during that wet season. See Tables 5 and 6. The storm event it reported sampling in 2010-2011 was in February, in which 4.26 inches of rain fell. In the prior months of October, November, and December, rainfall totaled 2.38, 2.50, and 7.13 inches, suggesting that the February rain event was not the first of the season to produce stormwater as reported by Amcor. Amcor gave as its reason for failing to take a second storm sample in that wet season that there "was not a second storm event that resulted in discharge from the facility during scheduled facility operating hours." 2010-2011 Annual Report. In its 2013-2014 Annual Report, Amcor claimed that there were no storm events at all during operating hours. However, Amcor reports that its facility is *always* open, so this explanation does not make sense in light of the rainfall that occurred during those wet seasons. See Table 5.

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[5] Observation not made during 1st hour of discharge as claimed to be outside of facility operational hours.

Table 6: **Reported Stormwater monitoring and sampling (deficiencies shaded)**

	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014
Date of storm events sampled (of 2 required)		2/17/10		11/22/12 11/28/12	
First storm sampled?	N	Y	N	Y	N
Sampled during first hour?	N	Y	N	Y	N
Three working days prior without stormwater?	N	Y	N	Y	N
Reason given for deficiency	None given	No second storm	None given		No storm during operating hours

Stormwater Permit Monitoring and Reporting Requirement, Section B.7	**Failure to sample storm all storm water discharge locations**

Amcor samples only from one storm drain location at the Facility, DP-1. This drain does not include discharges from all drainage areas at the Facility. For example, this drain does not include storm water from the loading and unloading docks, the parking area, or the PET silos, per Amcor's own SWPPP map.

IV. Conclusion

PPC will seek injunctive relief to prevent Amcor from further violations of the CWA and the terms of the stormwater permit, as well as penalties for each of the violation discussed above, and each day of violation for continuing violations.

Any and all communication related to this matter should be directed to Rachel S. Doughty, attorney for PPC, at the address and telephone number listed at the top of this letter.

Respectfully,

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